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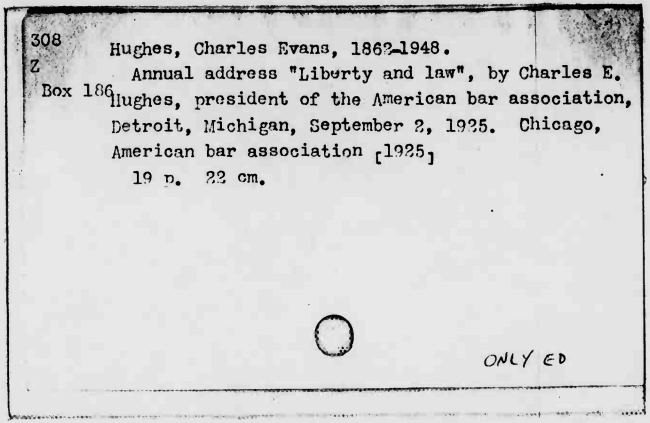

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By

Charles E. Hughes

President of the American Bar Association

DETROIT, MICHIGAN

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LIBERTY AND LAW.

BY

CHARLES E. HUGHES,

PRESIDENT OF THE AMERICAN BAR ASSOCIATION.

ANNUAL ADDRESS.

In availing myself this morning of the privilege of speaking not for the Association, but to the Association, I am impelled to make a few observations on liberty and law—a combination which our political alchemists seem to find increasing difficulty in successfully achieving. If I trench upon subjects of a controversial sort, I trust that you will not think that I am endeavoring to provoke contention, but rather—if I may change the figure—to climb with you to the pleasant heights which rise above the controversial plane, where one may gain a wider view and see larger objectives than those which loom in the imagination of the doughty warriors whose passionate zeal misses the higher strategy and may cause the sacrifice of some of the strongholds which the struggle for liberty has won. We call ourselves the ministers of justice, but we are reminded that the justice to be administered is justice according to law—the expression of the democratic will—and our still nobler privilege is that of the prophets and guides of society, versed in the long history of human progress, who may not forget so easily the standards which must be maintained if justice is not to be an illusion and democracy a mockery of our highest hopes. In our proper desire to promote a better understanding of our Constitution and of the advantages of its guarantees, let us not fail to remember that if it was designed to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense and promote the general welfare, these purposes found their ultimate aim in the determination to secure to ourselves and our posterity the blessings of *liberty*. It was to attain these ends, the security of life, liberty and the pursuit of happiness, that this Government was instituted among men. This purpose

is not achieved by praising the Constitution, worthy of praise as it is. First, because the Constitution leaves a broad field for legislative discretion. In the technique of constitutional law, the legislature must always be regarded as possessed of adequate learning, of wisdom, of pure motives. There must be very clear grounds for interfering with the action of representative bodies of such imputed virtue. But in actual experience, on the political highways which the Constitution has laid out, there is abundant opportunity for reckless driving. Then, the Constitution itself may be amended. There have been strong arguments in support of a doctrine of implied restrictions on the power of amendment, but apart from the explicit limitation found in Article V, it would be difficult to set bounds to what a militant opinion may demand and put through. It is even possible to obtain the consent of three-fourths of the states without the support of a majority of the people of all the states. The idea that the police power of the states could not be invaded by amendment can no longer be cherished. At the outset, in the Constitutional Convention, it was proposed by Mr. Sherman that the proviso in the article for amendments should be extended so as to provide " that no state should be affected in its internal police," but Mr. Madison objected to this, saying that " if the convention began on these special provisos every state would insist on them," and the proposal was defeated. The states have long been accustomed to the curb of the due process and equal protection clauses of the Fourteenth Amendment. The states are not to be destroyed; they may not be deprived of their equal suffrage in the Senate; but they may be shorn, as they have been shorn, of power. Aside from the ten original amendments, or bill of rights, which virtually accompanied the adoption of the Constitution, we have had nine amendments. For one hundred and twenty-one years we had only five amendments, and of these two were adopted over one hundred years ago and three followed the Civil War. Recently we have entered upon a new era, in which amendments and proposals for amendment are the order of the day. In the last twelve years we have had four amendments of far-reaching effect, providing for a federal income tax, for popular election of Senators, for prohibition of the manufacture and sale of intoxicating liquors, and for woman suffrage. It is not my purpose to criticize any of these amendments, much less the broad power of

amendment. That power is our essential means of adaptation, our answer to the inciters of violence, our assurance of meeting peacefully—without any good reason for resort to revolution—all demands to which new exigencies may give rise. But that power and the proved facility of its exercise warn us not to put our trust in papers or in legalism. We shall maintain our constitutional guarantees only so long as they embody the American spirit. The fundamental need is not satisfied by the fundamental law, but only by a tenacious grasp of the fundamental principles which are back of that law—the principles of liberty to be respected, illustrated and applied by law. We are admonished, as we consider the times, that we must take fresh hold of these principles, treasure our privilege to declare them, extricate them from the confusion of controversies, make them plain to the well-meaning and zealous citizens who in the pursuit of aims believed to be worthy may be unmindful of them.

When we think of the menaces to a well-ordered freedom we are apt first to lament the multiplicity and uncertainty of laws. And well we may. From my earliest recollection our leaders have bewailed the growing volume of our laws, and never have lamentations been more sincere or more futile. We stand up in these meetings like prophets of old, as if clad in haircloth and fed on locusts and wild honey, crying, " Prepare ye the way of the law! Make its paths straight and smooth!" And then, casting aside the prophetical garb, and supported by a more generous diet, our lawyers in and out of the legislatures of forty-eight states and federal Congress resume the never ending task of heaping up laws and providing thickets instead of roads. The cause of this is not to be found in lack of sincerity. The truth is that these multiplying laws are largely the natural sequence of other laws; they are proposed to meet the demands of individuals and communities seeking changes and improvements that they may escape the meshes in which they already find themselves entangled. After you get through with private bills, local bills, amendments of charters of all sorts, relief of towns, villages and cities, provisions for public improvements, and appropriations, you will probably find that the bulk of legislation of a general nature directly touching our lives and property is much smaller than you thought, although much larger than it ought to be. And if you look at the mass of discarded legislative

proposals, at the thousands of bills that annually fail, your eyes may brighten. But you cannot fail to realize that however we may decry, as we should continue to decry, the increasing volume of statutes, the greatest menace is not in numbers but in character. One little statute, in a few words, may carry a thrust at a vital spot, or inflict a serious wound and give us far more trouble than a thousand prolix measures which may do no one any serious injury and of which most persons are happily ignorant.

The most ominous sign of our time, as it seems to me, is the indication of the growth of an intolerant spirit. It is the more dangerous when armed, as it usually is, with sincere conviction. It is a spirit whose wrath must be turned away by the soft answers of a sweet reasonableness. It can be exorcised only by invoking the Genius which watched over our infancy and has guided our development—a good Genius—still potent let us believe—the American spirit of civil and religious liberty. Our institutions were not devised to bring about uniformity of opinion; if they had been, we might well abandon hope. It is important to remember, as has well been said, that "the essential characteristic of true liberty is, that under its shelter many different types of life and character and opinion and belief can develop unmolested and unobstructed." Nowhere could this shelter be more necessary than in our own country with its different racial stocks, variety of faiths, and the manifold interests and opinions which attest the vigor and zest of our intellectual life. Let not the vital principle be obscured by mere discussions of constitutional power. We justly prize our safeguards against abuses but they will not last long if intolerance gets under way. Some may still entertain the notion that democracy means liberty; that having disposed of dynasties and successfully stormed the citadels of autocracy and privilege, having won the suffrage and denounced political disqualifications, liberty is secured. Undoubtedly the possession of equal political rights is demanded by a people instinct with the love of liberty, and only by such a people can they be maintained, as there is always the danger that the power gained by the exercise of these rights will be used to limit or destroy their exercise by others. Especially should we be on our guard against varieties of a false Americanism which professes to maintain American institutions while dethroning American ideals. But the just demands of liberty are not to be satisfied even by a free and uncorrupted right of suffrage. Democracy has its own capacity for tyranny. Some of the most menacing encroachments upon liberty invoke the democratic principle and assert the right of the majority to rule. Shall not the people—that is, the majority—have their heart's desire? There is no gainsaying this in the long run, and our only real protection is that it will not be their heart's desire to sweep away our cherished traditions of personal liberty. The interests of liberty are peculiarly those of individuals, and hence of minorities, and freedom is in danger of being slain at her own altars if the passion for uniformity and control of opinion gathers head.

There is the greater danger as the complexities of society increasingly demand that the range of personal volition be limited by law in the interest of liberty itself. We are compelled to lay stress on restraints in the view that the liberty which permits freedom of action would be a barren privilege if it did not also connote freedom from injurious action by others, and the security of life and of individual opportunity lies in its immunities. Civilization itself is progress in multiplying restraints to conserve opportunities. The discoveries of science constantly reveal new menaces with which only organized society can cope. When we have made sure our escape from despots we find new enemies lurking to frustrate our pursuit of happiness. We are subject to the onslaughts of myriads of foes which we call germs, quite as destructive of life, health and happiness as any autocracy. Liberty is today a broader conception than ever before, for it increasingly demands protection; it demands protection against infection, against the spread of disease; it requires preventive measures and the segregation of those afflicted. It demands protection on the public highways against those frequent abusers of liberty who have subjected the peripatetic philosophers of our day and other simple-minded pedestrians to perils which in frequency and deadliness are of a sort formerly known only to soldiers on the battlefield. It is in need of safeguards against organized endeavors to exploit individuals whether those who labor in insanitary sweat-shops or the consumers of necessaries constrained to purchase them at excessive prices. Liberty today has such broad scope that it taxes the acumen of the ablest statesman to provide laws which even measurably assure it. It is no longer the simple matter of doing what one pleases in the wide open spaces, for there are

no such spaces and the danger from other libertines more than offsets the delight in an uncontrolled freedom. In providing through popular government these guarantees of the new liberty we have become so accustomed to the increasing need for regulations, because of congestion of population in great communities, because of the necessity of resisting the assaults and contrivances of the predatory who have their own notions of freedom, that we are disposed to become obsessed with the assertion of community power and with the creation of all sorts of legislative restraints which, in the language of the day, we can "put across" constitutionally. We are apt to be unmindful of the other aspects of liberty and of the supreme aim and justification of the law-making of free men and women, which should ever be found, not in the satisfactions of the lust of power, not in an imperious domination and command of uniformity, but in the purpose to secure the freedom of the individual—an ordered freedom, but still freedom—subject only to such restraints as a sound and tolerant judgment determines to be essential to the mutuality of liberty.

It is with this practical aim, and not in the mere desire to uphold an abstract theory, that we invoke the spirit of our institutions to secure the maintenance of local autonomy for local concerns. The intricacies of our interrelations which demand action in the national sphere, as national concerns multiply, make attention to the requirements of local self-government all the more important, so that the individual may have as direct a part as possible in the government of his life, a part which shall not be rendered relatively inconsequential by the centralization of power. There is, indeed, a distinct national interest in maintaining local self-government, for proper national concerns will be better directed and the accountability of national officers and legislators will be more intelligently enforced by a people whose sense of responsibility is sharpened by their participation in the control of their local affairs. Every restriction of the authority of local self-government must show cause in the interest of the liberties and opportunities of all and not in the mere desire of one or more communities or groups to govern the life of others, albeit for their own good. There may be an imperialism at home as well as abroad. Apart from the historic reason for our dual system of government, we rally to its defense because of an increasing appre-

ciation of the priceless opportunity it affords to conserve the interests of an ordered freedom.

Again, where schemes of control are needed either in national or local affairs, we find it necessary ever to be on the alert against insidious encroachments under the guise of official discretion—against the armored cars of bureaucrats which run so freely without showing a head to hit. We have had to overcome our reluctance to invest administrative officials with adequate power to control abuses. We have escaped our denunciation of the multiplication of laws by passing laws under the guise of regulations. If science and the artifices of the unscrupulous have disclosed new perils they have also shown the impotence of mere general legislation. Legislators have little time to follow the trails of expert inquiry and so we turn the whole business over to a few with broad authority to make the actual rules which control our conduct. The exigency is inescapable but the guardians of liberty will ever be watchful lest they are rushed from legislative incapacity into official caprice. If we escape bureaucracy it will not be because of dissertations on delegations of legislative authority. We are a practical people and necessary delegations will not fail to find reasons to support them. It will be only because we never lose sight of the ultimate purpose of government, because we would rather take some risks than give too much leeway to officialism, because we refuse to establish or maintain power for its own sake, and because we have the assertiveness of the unbroken will of free men who will insist that every public officer must constantly feel that he is a servant and not a master, the servant of an intelligent community which is content with thorough investigation and impartial findings and scientific applications, but is not servile and is able and quick to detect favoritism or arbitrariness. It will be for the reason that we are not willing to exchange our birthright for a mess of administrative pottage, no better for being prepared by democratic cooks.

After all allowances are made for multiplying laws and complex administration, after all the proper demands of an intricate social life have been fairly met, there still remain the old categories—or let us call them citadels—of individual liberty which are not to be surrendered. What are these? The Supreme Court of the United States has recently described them in these words: Liberty "denotes not merely freedom from bodily restraints, but also the

right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." Our constitutional guarantees of these essentials and the judicial mechanism we have devised to maintain them, are better understood and more fully supported by our people, I believe, than they have been for a long period. But, as I have said, the alert citizen will not be content even with these. Within the sphere of permissible legislative activity, where motives and purposes may be more freely debated than in judicial proceedings, he will be swift to detect the impairment of his privileges and the perversion of law to ulterior aims inconsistent with the standards of liberty. And some of these standards need a new emphasis at this time.

If progress has taught us anything, it is the vital need of the freedom of learning. If we have any assurance for the future, it lies in education, in the dissemination of correct information, in availing ourselves of the investigations of science, in the formation of a sound public opinion which must rest on a broad liberal culture. When we consider the abuses which vex our life, the problems caused by the inevitable conflict of interests, the incitements of cupidity, the baffling obstacles to reasonable processes which are traceable to ignorance, and the opportunities of demagogy taking advantage of all these—the vast difficulties in making democratic institutions work—we always come back to education and buttress our hope in its manifold instrumentalities and our response to their call. But reliance upon education will be in vain if we do not maintain the freedom of learning. Perhaps that is the most precious privilege of liberty—the privilege of knowing, of pursuing untrammelled the paths of discovery, of inquiry, of invention. And like other privileges of liberty, it is not one to be reserved to a few. It belongs to all, and the only protection for all is that it does belong to all and that society is thus assured its full benefit.

Yet it is with respect to the freedom of learning that we find a disposition to impose restrictions which cannot fail to give us grave concern. It is to be observed in the field of medical research.

What department of intellectual activity is more important to a free people? Of what avail are the privileges of life, if we do not live? Of what gain is liberty, if we succumb to the ravages of communicable diseases? Of what value is government, if it puts research under ban and permits the spread of plagues which knowledge may prevent? In what area of endeavor has there been such fruitage as in preventive medicine, saving countless lives and putting an end to indescribable agonies of human beings? Yet we observe persistent attempts in our legislatures not only to impair the immunities already gained, but to hamper scientific investigations through which alone the scourges of disease now beyond remedy may come under control.

While they are with a different purpose, we observe the manifestations of the same spirit in the efforts to interfere with instruction in our schools, not to promote the acquisition of knowledge, but to obstruct it. The Supreme Court of the United States has had occasion to deal with such an attempt to control teaching in private schools. Under a statute, forbidding the teaching of any other than the English language to a pupil who had not passed the eighth grade, a teacher was subjected to a criminal prosecution for teaching the German language. Even the court, with its necessarily limited judicial vision, could see what lay behind such an enactment and condemned it as an unwarranted interference with the constitutional guarantee of liberty. "Evidently," said the court, "the legislature has attempted materially to interfere with the calling of modern language teachers, with the opportunities of pupils to acquire knowledge, and with the power of parents to control the education of their own children." The statute as applied was found to be arbitrary and without reasonable relation to any end within the competency of the state. The same principle was applied in the Oregon school case where the statute under review in substance attempted to interfere with the privilege in instruction in private schools. "The child," said the Supreme Court, "is not the mere creature of the state. Those who nurture him and direct his destiny have the right coupled with the high duty to recognize and prepare him for additional obligations." Manifestly the purpose of the statute was not to aid education, but arbitrarily to interfere with the freedom of instruction.

The question is now presented as to the control of education in the public schols. I do not propose to discuss evolution, or a particular statute and litigation recently much advertised; or even constitutional issues which, grave as they are, are of less concern than a sound public sentiment on the larger question involved. I desire in a non-controversial spirit to emphasize the vast importance of the freedom of learning in the hope that our people instinct with the spirit of liberty will not lay hands on our public schools and state universities to set obstacles in the path of knowledge. It is a plausible statement that if the state provides institutions of learning, it is entitled to determine what shall be taught in them. Let the taxpayers, it is said—the majority, it is meant—define the curriculum. Of course, there is power to regulate the curricula in public educational institutions and this power is exercised by Boards of Education and various educational authorities under legislation in all our states. And, while I shall not attempt, as I have said, to discuss the constitutional questions raised by particular legislation which will come under the appropriate judicial review, the constitutional criterion is sufficiently apparent and that is whether legislation with regard to courses of instruction, as to what may and may not be taught, has relation to a legitimate object within the state power and is not to be condemned as arbitrary and capricious. Laying on one side the constitutional question of power, always considered with every appropriate presumption in favor of its exercise, we have the even more fundamental question of the proper standards of state action in the field of education and how its authority should be used in a free society even if there were no constitutional restrictions. Should it not be used with the intelligent and sole purpose to promote the acquisition of knowledge, to make broad the avenues of research, to disseminate the information which the toil of countless laborers in the difficult fields of learning has acquired? If it be understood that the end to be attained is the diffusion of knowledge, and not its prevention, the means will be considered with a view to that end. As we reflect upon the course of history, we cannot fail to appreciate how little we owe to governments and how much to education and to the methods and achievements of scientific inquiry. Governments and statesmen have too often stood in the way; they have helped to the extent that they have kept the avenues open. If we

sum up the comforts, the conveniences, the privileges and the opportunities of our life in the twentieth century, if we look back upon the privations, the menaces, the exposures from which the progress of civilization has gradually relieved not only the most fortunate, but the vast masses of the people in enlightened countries, we must realize that these benefits are due, not so much to governments, or politics, or the strivings and issues of campaigns, but to the ceaseless and unobtrusive endeavors, and the unquenchable zeal, of the pioneers and their devoted followers in the quest of knowledge, who in the study of the earth and the universe have enlarged the inheritance of the race and vindicated the capacity and worth of the human spirit. Believing, as I do, that the freedom of learning is the vital breath of democracy and progress, I trust that a recognition of its supreme importance will direct the hand of power, and that our public schools—for the mass of our young people can know no other—and our state universities, the crown of our educational system, may enjoy the priceless advantages of courses of instruction designed to promote the acquisition of all knowledge and may not be placed under restrictions to prevent it, and that our teachers and professors may be encouraged, not to regard themselves as the pliant tools of power, but to dedicate their lives to the highest of all purposes, to know and to teach the truth, the whole truth and nothing but the truth. This is the path of salvation of men and democracy.

It would be serious enough if interference with education found its motive in the desire to control intellectual activity in the interest of former intellectual concepts, but it is far more serious when these endeavors are for the purpose of controlling the pursuit of knowledge in what is supposed to be the interest of religion by aiming at the protection of creed or dogma. To control curricula in our public schools and state universities in the interest of a reasonable arrangement of courses of study in order to aid the acquisition of knowledge, is one thing; to attempt to control public instruction in the interest of any religious creed or dogma is quite another. If we are true to the ideal of religious liberty the power of government is not to be used to propagate religious doctrines or to interfere with the liberty of the citizen in order to maintain religious doctrines. The question is not whether these doctrines are true and should be

embraced. The point is that this is not the way to foster their support. In our country there are all sorts of religious beliefs and practices, and at one time or another before religious liberty was established here our forebears in other lands have all alike—Baptists, Presbyterians, Catholics, Jews, Quakers and others—suffered persecution at the hand of government. What was the reason of this persecution? Was it not a plausible one? What could be more plausible than that the truth of religion should be fostered and supported by the state? But if so fostered and supported, its nature will be determined by the state. What could be a nobler exercise of governmental power than to destroy religious error and save the souls of men from perdition? That plausible pretext has given us the saddest pages of history. That is the road that leads back to the perversion of authority and the abhorrent practices of the dark days of political disqualifications on grounds of religion, of persecution, of religious wars, of tortures, of martyrdom. If kings and princes, or the legislative majorities which have succeeded them, may enter the domain of conscience it is certain that they will make this entry with the most fiery zeal, the most profound conviction, the most ruthless determination of which the human heart is capable. We have problems enough without introducing religious strife into our politics. If we are to be saved a recrudescence of interference with religious liberty, mistaken zeal must be checked as soon as it appears, not by opposing religion or faith, but by maintaining freedom for religion and faith, not on the false assumption that we are not a deeply religious people, but rather by appealing to the sincere patriotic hearts of those to whom religion and faith are dear that they may not be led to demand the sacrifice of the vital principles of free institutions. I said a moment ago that the effort to control the acquisition of knowledge was supposed to be in the interest of religion; in truth, it cannot be in that interest. There is in our human nature an ineradicable curiosity with respect to the earth in which we live, to other worlds, to the universe of which we are such an infinitesimal part. It is a God-given instinct to search for truth, and nothing short of the truth will ever satisfy our yearning. There are no conflicts in truth. To learn, to know, is the way of life, and faith only serves to honor the quest. The history of religion shows the futility of governmental efforts to control it. We are here today—all of us, of whatever faith—as witnesses of that futility. The highest interests of the soul demand freedom, not fetters, and the immunity of the domain of conscience from the control of government is the assurance of the richest fruitage of the spiritual life.

When we turn to the consideration of the administration of justice in our courts, we shall do well to consider our problems from a similar standpoint. In a democratic society, the enforcement of law finds its justification not in the interest of authority, as such, but in the maintenance of respect for law as proceeding from a free people and as being essential to liberty which vanishes if violence, turbulence and disorder usurp the place of law. Respect for law in such a society is a sportsmanlike regard for the rules of the game which cannot be had without rules. Be careful in the making of the rules and play the game. If we endeavor to define the fundamental needs in the administration of justice, they might perhaps be called simplicity and expertness. We have tied ourselves up in procedural requirements and it is pleasant to observe that gradually we are gaining freedom from an unnecessary network. We have marshalled the forces of simplification and, as it is said that the truth will come out even in affidavits, we may ultimately expect common sense to have a better chance even in the practice of the law. In our federal system, notable improvement has been made by the passage of the bill regulating procedure on appellate review by the Supreme Court—a bill sponsored by the Chief Justice and Associate Justices of the court and by this Association. We are still waiting for the passage of a simple bill giving to the Supreme Court the power to establish rules to govern the practice on the common law side of the federal courts of original jurisdiction. The difficulty in obtaining this measure of relief, which this Association has long advocated, well illustrates the conservatism that fails to conserve, that is careful of the form at the expense of the substance.

The first aid to the development of expertness in the administration of justice is in maintaining proper standards of legal education and for admission to the Bar. There is no guaranty of liberty in any true sense in putting the community in bondage to the ignorant. The unlearned practitioner of medicine may deprive the unhappy subject of his life without any due process whatever. The chief losses of society are due to incompetence, and the charges of an ill-informed lawyer, whatever they may

be, are too high. It should be understood that there is no "unalienable right" of the untrained to practice law and there is no special need of multiplying lawyers at the expense of training. The first duty of Bar associations in our states, cities and counties is to see that the unfit as to either knowledge or character are not admitted to practice. High standards of admission to the Bar will mean less ill-advised litigation and fewer hardships for trustful clients.

We constantly need to emphasize to the community, too often unmindful of its interests, the importance of obtaining for the Bench the best possible representation of an expert Bar. A poor judge is perhaps the most wasteful indulgence of the community. You can refuse to patronize a merchant who does not carry a good stock, but you have no recourse if you are haled before a judge whose mental or moral goods are inferior. Good intention is no substitute for adequate knowledge. The proper choice of judges is the special concern of the Bar, not because of any desire that the community should be restricted in its power of choice, but that it should choose well with the knowledge of the professional rating of candidates. A lawyer may be successful in deceiving his clients or the community as to his attainments, but he is known to his professional brethren and their assay is a needed warning of the lack of valuable content in much that may fascinate with its glitter the public gaze. We may take just pride in the fact that under our systems of selection we have obtained such a high grade of ability in our courts and that they well-nigh universally command respect. But here and there, and too often, we meet the drive of political organizations, and there are not lacking cases of misdirected ambition making a popular appeal, to put incompetent men on the Bench, and it is our privilege as lawyers to oppose these, not in the spirit of caste, but by promoting an intelligent appreciation of the essential safeguards of our liberties. An honest, high-minded, able, and fearless judge is the most valuable servant of democracy, for he illumines justice as he interprets and applies the law, as he makes clear the benefits and the short-comings of the standards of individual and community right among a free people.

But if we are to have and keep good judges we must properly provide for them. This Association has been seeking to get a better scale of compensation for our federal judges and we regret

that despite the exigency, which should at once be recognized, this relief has been delayed. The independence and dignity of judicial office, the love of the study of the law, makes such an appeal to good lawyers who are not mere men of commerce, that there will be no difficulty in adequately recruiting the Bench if we give talent a fair show. But too great a sacrifice should not be asked, and in our large cities where the cost of living is especially high it is a reproach to our democracy that it is almost necessary that federal judges should be selected from those who have independent means. No able young lawyer should find it impossible to contemplate a judicial career because he will be unable to bring up a family in the circumstances suitable to the station of the representative of justice in a notably prosperous community. Let the needed economy in public expenditures be gained by holding up the wasteful outlays of unnecessary and extravagant public enterprizes rather than in withholding the modest sums which are needed to equip an expert and essential public service. We may improve procedure, but any rules of procedure will be disappointing if we have poor umpires.

We too often think of liberty in connection with the administration of justice simply as it relates to the protection of the rights of one accused of crime—that is, to know the charge against him, to be represented by counsel, to be confronted with witnesses, to have an impartial trial. But liberty is not simply for the accused. We have a shocking prevalence of crime, and of crimes of violence, infractions of the plainest requirements of civilized society about which there is no debate. Our capacity to protect life itself is in question. There is a manifest failure to secure, through an adequate administration of our criminal laws and appropriate punishment of crimes, the deterrent effects which are in large part the object of these laws. This failure is due in part, but only to a slight extent, to obscurities in statutes; in part it may be attributed to defects in a procedure which favors delays and obstructions to the course of justice. The chief cause is probably a laxity of public sentiment—a general flabbiness with multiform disclosures—the most difficult thing to correct. There is no single remedy that will suffice and a cooperation of remedial efforts is needed. But we can do much at the Bar and on the Bench to secure the promptness, dignity and efficiency which should characterize administration. Lawyers are largely

responsible, I fear, for the lowering of the standards of justice, by seeking, if not demanding, an inordinate latitude especially in sensational cases. It is natural that cases which engage the public imagination should evoke the interest that attaches to a spectacular contest—a battle of wits—in which the fascination of the display of forensic skill displaces the just regard for the interests of the community, of the great hosts who are not on trial but whose right to security in their lives and property is deeply involved. It is impossible to escape the spectacular and no one would desire that the appropriate safeguards of innocence should be impaired. But it is vital that the purpose, the firmness and the dignity of judicial procedure should stand out above the strife of contestants. Judges are so desirous of being fair that they are loath to curtail forensic opportunities. They also have a keen eye for the possibility that they may be betrayed into error and that a long and expensive trial may in consequence go for nothing. But the Bar and the community will support a judge who knowing the range of his discretion and his responsibility will show his mastery of the proceedings before him. There is no reason why lawyers should be permitted to talk for hours on motions and objections, to make irrelevant speeches and to consume an inordinate time in blithesome excursions under the guise of cross-examination, especially of expert witnesses. We have become so accustomed to a broad exercise of discretion that lawyers not infrequently take more time in dealing with motions and objections than they would be allowed in arguing an important constitutional question before the Supreme Court of the United States. Of course, there are difficult states of fact in courts of first instance, conflicts of witnesses, which need suitable allowance for explication, but the excursions and declamations to which I refer, so frequently witnessed in criminal trials, have little to do with the issues. It is this sort of thing which brings about a confusion of the public mind. An expert Bar, tenacious of its rights and also aware of their limitations can aid the courts by keeping within the lines and by not attempting to play off-side. Let us not talk simply of rules of procedure in the desire to obtain the appropriate punishment of crime and the enforcement of law, but make it our concern that trials of criminal cases shall be less a game to please the spectators than a serious and successful effort to deal promptly and

efficiently with a precise charge with no right infringed and no nonsense tolerated.

Liberty and law—one and inseparable! The noblest endeavor of democracy to safeguard the one by intelligence in the other! That balanced judgment it is our highest privilege to aid in maintaining. We do not worship at the shrine of formalism; we do not follow the false gods which are satisfied by oblations and ceremonies. It is not the tithe of mint, anise, and cummin of the law upon which our attention is centered. We are free citizens of a republic with an unprecedented opportunity for an orderly progress and for an ever wider diffusion of prosperity, which are impossible save as justice is adequately served. Let us rise to our opportunity and as guardians of the traditions which constitute the precious possession of our democracy play our part in establishing and making secure the authority of law as the servant of liberty wisely conceived, as the expression of the righteousness which exalteth a nation.

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